UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DOUGLAS A. BELL and TAMMY BELL,

Plaintiffs,

v.

MASTER SERGEANT MIKE IRWIN and LIEUTENANT STEVEN CROW,

Defendants.

Case No. 00-cv-4078-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on the motions for summary judgment filed by defendants Master Sergeant Mike Irwin ("Irwin") (Doc. 106) and Lieutenant Steven Crow ("Crow") (Doc. 115). Plaintiffs Douglas Bell ("Mr. Bell") and Tammy Bell ("Mrs. Bell") (collectively, "the Bells") responded to the motions (Docs. 108 & 119), and Irwin and Crow replied respectively (Docs. 109 & 120).

I. Background

This § 1983 action stems from an April 2, 1999, incident in which Mr. Bell was arrested by Crow and Irwin, who are officers of the Illinois State Police. The Bells allege that in the course of the arrest Irwin fired four bean-bag rounds from a 12-gauge shotgun at point blank range at Mr. Bell's head when Mr. Bell posed no threat to anyone. The Bells claim that the use of such force in Mr. Bell's arrest was excessive and therefore violated Mr. Bell's rights under the Fourth Amendment. The Bells allege that Crow authorized Irwin to use such force, which the Bells allege is known to be lethal, without giving proper instruction about the circumstances in which it should be used. They also allege that Crow failed to intervene and prevent Irwin's use of excessive force once he became aware that it was being used. Mrs. Bell claims that as a result

of the defendants' battery of her husband, she has suffered a loss of his love, society, affection and consortium.

Irwin and Crow now ask the Court to grant summary judgment in their favor based on the merits of the case and on qualified immunity grounds.

II. Summary Judgment Standard

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Spath v. Hayes Wheels Int'l-Ind., Inc.*, 211 F.3d 392, 396 (7th Cir. 2000). The reviewing court must construe the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in favor of that party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Spath*, 211 F.3d at 396. Where the moving party fails to meet its strict burden of proof, a court cannot enter summary judgment for the moving party even if the opposing party fails to present relevant evidence in response to the motion. *Cooper v. Lane*, 969 F.2d 368, 371 (7th Cir. 1992).

In responding to a summary judgment motion, the nonmoving party may not simply rest upon the allegations contained in the pleadings but must present specific facts to show that a genuine issue of material fact exists. Fed. R. Civ. P. 56(e); *Celotex*, 477 U.S. at 322-26; *Johnson v. City of Fort Wayne*, 91 F.3d 922, 931 (7th Cir. 1996). A genuine issue of material fact is not demonstrated by the mere existence of "some alleged factual dispute between the parties," *Anderson*, 477 U.S. at 247, or by "some metaphysical doubt as to the material facts," *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *Michas v. Health Cost Controls of Ill., Inc.*, 209 F.3d 687, 692 (7th Cir. 2000). Rather, a genuine issue of material fact

exists only if "a fair-minded jury could return a verdict for the [nonmoving party] on the evidence presented." *Anderson,* 477 U.S. at 252; *accord Michas*, 209 F.3d at 692.

III. Facts

Viewed in the light most favorable to the Bells, the evidence establishes the following relevant facts.[1] In April 1999, the Bells lived in a trailer in Eldorado, Illinois. Late at night on April 1, 1999, Eldorado police officer James Johnson ("Johnson") was dispatched to the Bells' home in relation to a domestic disturbance between Mr. and Mrs. Bell. Johnson saw that the Bells were intoxicated and determined that the Bells had, in fact, been arguing. However, both of them told Johnson that they did not want anyone arrested, so Johnson returned to his regular patrol duties.

Less than an hour later, now into the morning of April 2, 1999, Johnson was again called to the Bells' home. He found Mrs. Bell outside and down the street from the Bells' trailer. She told him that Mr. Bell had "torn up" the trailer and was breaking dishes, and she asked for Johnson's help with Mr. Bell, who was still inside the trailer. Johnson knocked on the trailer door, but Mr. Bell refused to open the door. When Johnson asked Mr. Bell to come out of the trailer, he responded with profanity. Johnson then looked through the trailer door and saw Mr. Bell sitting on a couch with a large knife partially concealed under his leg. Seeing that a weapon was involved in the situation, Johnson called for back up from the Eldorado Police Department.

Police Chief Anthony Lloyd ("Lloyd") arrived on the scene and Johnson briefed him on

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[1]The Court notes that the defendants cite to non-existent or incorrect exhibits on occasion. For example, Irwin cites to Exhibit E-2, which does not exist, and Exhibit U, which does not contain anything relating to the facts for which it was cited. The Court has disregarded the alleged facts to the extent that they are not supported by the evidence. Curiously, the plaintiffs fail to cite any evidence in support of their assertions that facts are "disputed."

what had occurred so far that night. Lloyd knew that Mr. Bell had been cited in the past for driving under the influence, and Mrs. Bell told him that Mr. Bell had had personal problems and had attempted suicide twice in the past. After conferring with Johnson and Mrs. Bell, Lloyd talked to Mr. Bell and got him to open the door of the trailer. At that point, Mr. Bell, who still appeared to be intoxicated, was holding several knives and a can of beer in his hands and had several knives in a back pocket. Mr. Bell then put one of the knives he was holding into his pocket and picked up a meat cleaver. He told Lloyd that he had been having problems with his wife and appeared despondent. When Lloyd refused Mr. Bell's invitation to come inside the trailer, Mr. Bell stabbed one of the knives into the inside wall of the trailer beside the doorway and threw the meat cleaver into the ground in front of the trailer. Mr. Bell again refused to come out of the trailer and closed the door. A moment later, he opened the door again and resumed his conversation with Lloyd. A few minutes later, Lloyd asked for back up from the Illinois State Police and then continued to talk to Mr. Bell. A state police officer on the scene called his commander.

Lloyd continued to talk to Mr. Bell while the Illinois State Police was on its way there. Mr. Bell was still despondent. He told Lloyd he was not coming out of the trailer unless it was "feet first" and that he would kill any officer that tried to come in to get him, then would kill himself. Mr. Bell's father arrived on the scene, and he and Mr. Bell got into a heated argument. At that point, Mr. Bell threatened to "cut" Lloyd if he did not back up from where he was talking to Mr. Bell.

Crow was called to the scene. Before he arrived, a state police officer on the scene told Crow of Mr. Bell's criminal history, which included arrests for obstruction of justice, domestic violence and driving under the influence. He also told Crow that Mr. Bell had threatened

officers on the scene. Crow then told the state police officer to "contain the situation, establish a perimeter, and evacuate all the neighbors who would be in jeopardy if [Mr. Bell] came out and we had to engage him" and called for the tactical response team. Crow also learned from a criminal history check that Mr. Bell had been arrested previously for unlawful use of a weapon and obstruction of justice.

When Crow arrived on the scene, he saw Mr. Bell with a knife in the doorway of his trailer talking to Lloyd and Mr. Bell's father. Mr. Bell would periodically poke the knife at his own throat or wave it at Lloyd. He also said that he had nothing to live for and that if anyone tried to take him out of the trailer he would hurt them. Lloyd and a state police officer briefed Crow on the night's events, including their information that Mr. Bell had attempted suicides in the past and was threatening officers that night.

Irwin, the leader of the tactical response team, arrived on the scene a short while later, and Crow briefed him on the situation and Mr. Bell's background. Irwin and J.J. Wittenborn ("Wittenborn"), the assistant team leader, were armed with 12 gauge shotguns loaded with bean bag rounds, which they told Crow, the officer in charge of the scene. Bean bags rounds are "specialty impact munitions" designed to cause blunt trauma without penetration of the human body. Team members are trained and tested four times a year on the use of bean bag rounds. Crow was familiar with the capacity of the bean bag rounds with which Irwin and Wittenborn were armed. He authorized Irwin and Wittenborn to fire the bean bag rounds if Mr. Bell became threatening, but gave no more specific instructions about the use of the bean bag rounds.

After the tactical response team arrived, Mr. Bell appeared in the trailer door and began talking with Crow. Mr. Bell again announced that anyone who tried to get him out of the trailer would get hurt and that he would only leave the trailer "feet first." At various points in the

conversation, Mr. Bell held a paring knife, a large two-pronged fork and other items capable of cutting or stabbing. Crow eventually moved closer to the trailer door so Mr. Bell could see him better. At this point, Irwin was to Crow's immediate right and was helping him think of things to say to Mr. Bell.

Mr. Bell eventually emerged from the trailer and sat on the steps leading to the trailer door. He asked Crow to come closer to him, but again warned that if Crow tried to rush him, someone would get hurt. Mr. Bell retreated into the doorway again and complained to Crow about what Mrs. Bell had done to his trailer and how she had injured him. He also said that he was going to blow up the place and that he had enough kerosene, propane and everything else he needed to do so. Mr. Bell then pointed to propane tanks at the end of his trailer. There was also a propane tank near the trailer door and a blue kerosene can under the trailer steps, and Mr. Bell had a lighter in his hand. Mr. Bell went back inside his trailer and reappeared in the doorway a short while later.

Crow moved closer to Mr. Bell to try to shine a flashlight into the trailer to see the damage that Mr. Bell said Mrs. Bell had done. Within seconds, Irwin saw Mr. Bell quickly put one foot on the trailer step and lean forward with his left arm extended toward the kerosene can under the steps. Mr. Bell still had the lighter in his hand and Irwin believed that Mr. Bell had the capacity to, within seconds, ignite or blow up the entire trailer using the propane with which he heated the trailer or cooked his meals. Based on Mr. Bell's aggressive and hostile demeanor that night, his apparent unwillingness to cooperate with Lloyd or Crow by coming out of the trailer voluntarily, his criminal history and his announced lack of concern for the safety others, Irwin thought this was a serious possibility. Without any warning, beginning from behind and to the right of Crow, Irwin fired four bean bag shots in quick succession while walking rapidly past

Crow toward Mr. Bell.

Irwin aimed at Mr. Bell's left arm and chest but also hit him in the head, causing him to fall backward into the trailer. Specifically, Irwin fired the first shot from approximately twelve feet. The shot hit Mr. Bell in the chest and caused him to flinch. Keeping an eye on Mr. Bell, Irwin then began moving forward and fired the second shot from approximately ten feet. The second shot also hit Mr. Bell in the chest and caused him to stagger but not to collapse. Continuing to move toward Mr. Bell, Irwin fired a third shot from approximately eight feet. The third shot hit Mr. Bell in the head and caused him to bend forward and stagger backwards into the trailer. Irwin fired the fourth and final shot from approximately eight feet and hit Mr. Bell in the arm. This shot finally caused Mr. Bell to fall down. Irwin fired the shots at about one-second intervals. He believed four shots were necessary to incapacitate Mr. Bell thoroughly and prevent him from causing a fire or explosion or from using a knife to injure a police officer. Irwin also believed that the use of deadly force would have been appropriate in that situation because Mr. Bell had threatened to blow up his trailer and to seriously injure or kill other people.

After firing the four bean bag rounds, Irwin dropped his shotgun and entered the trailer where he grabbed Mr. Bell by the arm. The team took Mr. Bell into custody, removed him from the trailer and began giving him first aid. Soon thereafter Mr. Bell was taken to the emergency room for treatment of his injuries. When he arrived at the hospital, Mr. Bell was unconscious and bleeding from the head and left upper arm. He had a one inch by one inch hole in his upper left arm where a bean bag was embedded. Mr. Bell has experienced a loss of memory since the incident.

IV. Analysis

A. Count I: Mr. Bell's Claim Against Irwin

Irwin is entitled to summary judgment on Count I on two alternate grounds.

1. Merits

Irwin is entitled to summary judgment on Count I because he has shown that the Bells cannot prove their claim that he used excessive force in arresting Mr. Bell.

"[*A*]*ll* claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest . . . should be analyzed under the Fourth Amendment and its 'reasonableness' standard." *Graham v. Connor*, 490 U.S. 386, 395 (1989) (emphasis in original); *see Tennessee v. Garner*, 471 U.S. 1, 7-8 (1985).[2] "Determining whether the force used to effect [an arrest] is 'reasonable' under the Fourth Amendment requires a careful balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." *Graham*, 490 U.S. at 396 (quoting *Garner*, 471 U.S. at 8 (further internal quotations omitted). The "reasonableness standard" cannot be precisely defined or mechanically applied. *Graham*, 490 U.S. at 396. On the contrary, it turns on the totality of the circumstances of each particular case including "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. The determination must also consider "that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and

[2]The Fourth Amendment provides that the "right of the people to be secure in their persons . . . against unreasonable . . . seizures [of the person] shall not be violated." U.S. Const. amend. IV.

rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham*, 490 U.S. at 396-97.

The "reasonableness" standard is objective. *Graham*, 490 U.S. at 397. Whether a use of force is reasonable "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and must turn on "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham*, 490 U.S. at 396, 397; *see Saucier v. Katz*, 533 U.S. 194, 206 (2001).

Mr. Bell claims that Irwin used excessive force when he fired the four bean bag rounds at him. Irwin claims that under the circumstances as they were known to him at the time, a reasonable officer would have responded just as he did and that therefore his conduct was not unreasonable. Mr. Bell offers no evidence to contradict the evidence establishing the facts as set forth by Irwin. Instead, he merely labels the "facts" alleged by Irwin as "opinion" and "inference." This is not a sufficient response under Rule 56(e) to create an issue of fact. Mr. Bell also points, without citing any evidence, to his "serious head injuries" and argues that they weigh in favor of finding that the force Irwin used was excessive. Finally, he argues that reasonableness is a question that the jury should decide.

The Court finds that, even when the evidence is viewed in the light most favorable to Mr. Bell, no reasonable jury could find that Irwin's use of force was unreasonable and therefore excessive. Examining the totality of the circumstances in this case, the Court has no doubt that Irwin's conduct was eminently reasonable. Irwin knew that Mr. Bell was in an emotional state that appeared to be exaggerated due to intoxication and that he had refused to cooperate with law enforcement officers that night. He also knew that Mr. Bell had tried to commit suicide in the

past and that he had threatened to kill himself and others that night. Irwin he knew that Mr. Bell had knives, other sharp objects and explosive materials either in his grasp or within easy reach throughout the night. When Mr. Bell announced a specific plan to blow up his trailer – which could also seriously injure or kill others in the immediate area – and retreated into the trailer such that he could have begun to release propane or other explosive materials into his house, Irwin reasonably believed that Mr. Bell might be putting his plan into action behind closed doors. Then, when Mr. Bell made a furtive motion with a lighter in his hand toward what appeared to be a kerosene can in Irwin's plain view, Irwin stopped Mr. Bell by firing bean bag rounds aimed at his chest and arm. It took four rounds to bring Mr. Bell to the ground, and all of them were fired from at least eight feet away. Irwin, who was trained quarterly in the use of bean bag rounds, knew that they were not as dangerous as bullets, although he knew that they could seriously injure a person.

It is clear that any reasonable officer in Irwin's position would have believed that Mr. Bell, emotional and drunk, posed an immediate and serious, if not deadly, threat to himself, to the law enforcement officers surrounding the trailer and to others in the trailer park. A reasonable officer also would have been justified in using force less potent than bullets, although still dangerous, to prevent Mr. Bell from causing a dangerous and deadly explosion.[3] This is

[3]Whether the use of bean bag rounds constituted deadly force or some lesser level of force in this situation is not an issue of fact that would preclude summary judgment. *Compare Omdahl v. Lindholm*, 170 F.3d 730 (7th Cir. 1999) (no threat of harm to officers or others). Under the facts presented in this case, Irwin and any other reasonable officer would have had probable cause to believe that Mr. Bell posed an immediate threat of serious physical harm to Irwin, the other police officers and other residents of the trailer park. The Supreme Court has indicated that the use of deadly force is appropriate in such threatening situations. *See Tennessee v. Garner*, 471 U.S. 1, 11 (1985). Therefore, the question of whether bean bags rounds are "deadly force" is not a material issue of fact in this case and does not preclude summary judgment.

especially true in light of the fact that Mr. Bell appeared to be taking concrete steps toward that end by reaching toward a kerosene can with a lighter in his hand. A reasonable officer would also have not hesitated to fire any number of bean bag rounds necessary to bring Mr. Bell to the ground and to prevent him from accessing any of the numerous weapons, explosive materials or ignition devices within his reach. That Mr. Bell was hit in the head by a bean bag that was aimed at his chest or arm does not, in retrospect, render Irwin's behavior unreasonable.

The Court is convinced that Irwin's conduct was objectively reasonable and that no reasonable jury could find otherwise. Because there is no genuine issue of material fact regarding the reasonableness of Irwin's behavior, Irwin is entitled to summary judgment on Count I as a matter of law.

2. Qualified Immunity

Even if Irwin's conduct had been unconstitutional, he would be entitled to summary judgment because he is protected by the doctrine of qualified immunity.

Qualified immunity is an affirmative defense that shields government officials from liability for civil damages where their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Denius v. Dunlap*, 209 F.3d 944, 950 (7th Cir. 2000). It applies only to state officials who occupy positions with discretionary or policymaking authority and who are acting in their official capacities. *Harlow*, 457 U.S. at 816; *Denius*, 209 F.3d at 950. A court required to rule upon the qualified immunity issue must first consider whether the facts alleged, taken in the light most favorable to the party asserting the injury, show that the officer's conduct violated a constitutional right. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Only after a court has determined that the plaintiff has alleged a constitutional violation, should a court pursue the

question of qualified immunity. *Id*.

If the plaintiff has alleged a constitutional violation, then the question is whether the right allegedly violated was clearly established at the relevant time. *Id*. "This inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition." *Id*.; *see McNair v. Coffey*, 279 F.3d 463, 465 (7th Cir. 2002). "If the law did not put the officer on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate." *Saucier*, 533 U.S. at 202. The plaintiff bears the burden of demonstrating that a constitutional right is clearly established. *Denius*, 209 F.3d at 950.

In this case, the key inquiry for the purpose of qualified immunity analysis is whether, in the particular situation confronted by Irwin, it would have been clear to a reasonable officer that Irwin's alleged conduct was unlawful. *See Saucier*, 533 U.S. at 202. The only Court of Appeals case to which Mr. Bell points, *Omdahl v. Lindholm*, 170 F.3d 730 (7th Cir. 1999), does not definitively answer that question. *Omdahl*, which was decided only eighteen days before Irwin fired bean bag rounds at Mr. Bell, involved the use of bean bag rounds against an individual who was threatening to commit suicide with a shotgun but expressed no intention to harm others. *Id.* at 731. An officer shot bean bag rounds at him while his gun was lowered, and then another officer shot him with a bullet in the face. *Id.* at 731-32. The District Court denied the officers' motion for summary judgment on qualified immunity grounds, stating that there was an issue of fact as to the whether the officers used "deadly force." *Id.* at 732. In ruling on the officers' interlocutory appeal, the Court of Appeals held that it did not have jurisdiction to hear the interlocutory appeal because the appeal challenged the District Court's determination about whether there was an issue of fact, not its determination of a legal question. *Id.* at 733-34. This is a far cry from "clearly establishing" that the use of bean bag rounds in a situation like the one

in this case is excessive.

In fact, *Omdahl* and the case at bar differ in several respects. First, the facts as known to the officers involved are distinguishable. In *Omdahl*, the suspect was not aggressive toward others and had aimed his weapon away from anyone. Unlike the officers in *Omdahl*, Irwin was faced with an individual who was aggressive, had threatened others and was taking concrete steps to achieve his threats. *Omdahl* is not a case with clearly analogous facts that would have enlightened a reasonable officer in Irwin's position as to the level of force he could constitutionally use.

Second, the Court of Appeals in *Omdahl* made no decision about whether bean bag rounds are deadly force and therefore subject to the clearly established restrictions on the use of deadly force. *See Tennessee v. Garner*, 471 U.S. 1, 11 (1985) (holding that deadly force is constitutional where an officer has probable cause to believe a suspect poses a threat of serious physical harm to the officer or to others). On the contrary, the Court of Appeals merely decided that it lacked the authority to make *any* decision on the appeal as it was presented to them. No reasonable officer would take the *Omdahl* decision to mean anything definitive about when bean bag rounds, whether deadly or not, are appropriate

In sum, *Omdahl* does nothing to enlighten a reasonable officer about whether he can constitutionally use bean bag rounds in a situation like that faced by Irwin. The only other case cited by Mr. Bell is a district court case that has nothing to do with bean bag rounds and was decided almost two years after Mr. Bell's apprehension. *Robinson v. City of Harvey*, Case No. 99 C 3696, 2001 WL 138901 (N.D. Ill. Feb. 16, 2001). Additionally, a district court case alone cannot "clearly establish" a right for qualified immunity purposes. *Anderson v. Romero*, 72 F.3d 518, 525 (7th Cir. 1995). For these reasons, the Court finds that Mr. Bell has not demonstrated

that his Fourth Amendment right in the case at bar was clearly established on April 2, 1999. Therefore, Irwin is entitled to qualified immunity on Count I.

For the foregoing reasons, the Court will grant Irwin's motion for summary judgment on Count I.

B. Count II: Mr. Bell's Claim Against Crow

Crow is entitled to summary judgment on Count II because there was no unconstitutional use of force.

Mr. Bell alleges that Crow violated his Fourth Amendment rights by failing to instruct Irwin properly in the use of deadly force and by failing to intervene to prevent Irwin's use of excessive force toward Mr. Bell. The Court need not spend a great deal of time on Mr. Bell's claims against Crow because those claims fall along with his claims against Irwin.

Mr. Bell relies on two theories of liability. The first theory is that a supervisor may be liable because he exhibits deliberate indifference to the danger posed by an armed officer when the supervisor fails to instruct that officer that he is not to use deadly force except to prevent a killing or the infliction of other great bodily harm. *See Pena v. Leombruni*, 200 F.3d 1031, 1033 (7th Cir. 1999) (citing *City of Canton v. Harris*, 489 U.S. 378, 390 n. 10, (1989)), *cert. denied*, 530 U.S. 1208 (2000). The second theory is that a supervisor may also be liable because he has reason to know that a subordinate officer is using excessive force, he has a realistic opportunity to intervene to prevent the harm and he fails to do so. *Lanigan v. Village of E. Hazel Crest*, 110 F.3d 467, 477 (7th Cir. 1997); *Yang v. Hardin*, 37 F.3d 282, 285 (7th Cir. 1994). Both theories, however, can only succeed if the subordinate armed officer committed a constitutional violation. A defendant cannot be liable for failing to prevent a constitutional violation where the plaintiff cannot prove that underlying violation. *See Chavez v. Illinois State Police*, 251 F.3d 612, 652

(7th Cir. 2001); *Gossmeyer v. McDonald*, 128 F.3d 481, 494 (7th Cir. 1997).

Thus, Crow's liability for failing to adequately instruct Irwin or for failing to intervene to prevent Irwin from firing bean bag rounds depends on Irwin's liability for having used excessive force. Because the Court has determined that Irwin committed no constitutional violation when he fired the bean bag rounds at Mr. Bell, Crow cannot be liable for failing to instruct or intervene. Accordingly, the Court will grant Crow's motion for summary judgment.

C. Counts III & IV: Mrs. Bell's Claims

Irwin and Crow urge the Court to decline, pursuant to 28 U.S.C. § 1367(c)(3), to exercise supplemental jurisdiction over Mrs. Bell's state law claims against them for loss of consortium. Mrs. Bell argues that the Court should exercise supplemental jurisdiction because she believes summary judgment on her husband's claims is not warranted.

Section 1367(c)(3) provides that a district court "may decline to exercise supplemental jurisdiction . . . if . . . the district court has dismissed all claims over which it has original jurisdiction." In deciding whether to retain or decline jurisdiction over state law claims when no original jurisdiction claims remain pending, a district court should consider judicial economy, convenience, fairness and comity. *Wright v. Associated Ins. Cos.*, 29 F.3d 1244, 1251 (7th Cir. 1994) (citing *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988)).

The Court is granting summary judgment on Counts I and II, the only claims in this case over which it has original jurisdiction. Therefore, under § 1367(c)(3), the Court has discretion to exercise supplemental jurisdiction over Counts III and IV. The Court has considered the relevant factors and finds that it is appropriate not to exercise such jurisdiction. The Court firmly believes that Illinois state courts are far better equipped to hear cases that turn on the interpretation and application of state law between citizens of Illinois. As a matter of comity and

efficiency, the privilege of hearing such cases should rest with the state court system. Furthermore, it would be no less convenient for Mrs. Bell to proceed in state court than in federal court, and she has not pointed to any unfairness that would result from litigation in a state forum. For these reasons, the Court declines to exercise jurisdiction over Mrs. Bell's claims and will dismiss those claims without prejudice for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1367(c)(3).

V. Conclusion

For the foregoing reasons, the Court hereby

- **GRANTS** Irwin's motion for summary judgment (Doc. 106), **GRANTS** summary judgment on Count I in favor of Irwin and against Mr. Bell and **DISMISSES without prejudice for lack of subject matter jurisdiction** Mrs. Bell's claim in Count III against Irwin;

- **GRANTS** Crow's motion for summary judgment (Doc. 115), **GRANTS** summary judgment on Count II in favor of Crow and against Mr. Bell and **DISMISSES without prejudice for lack of subject matter jurisdiction** Mrs. Bell's claim in Count IV against Irwin; and

- **DIRECTS** the Clerk of Court to enter judgment accordingly.

IT IS SO ORDERED.
DATED: May ____, 2002

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J. PHIL GILBERT
DISTRICT JUDGE